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IN THE

Supreme Court of the United States

OCTOBER TERM, ~~1948~~ 1949

No. ~~[illegible]~~ 70

JOHN E. MANNING, as Collector of Internal Revenue for the Fifth District of New Jersey,

Petitioner,

v.

SEELEY TUBE & BOX COMPANY, a corporation of the State of New Jersey,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR THE RESPONDENT IN OPPOSITION TO THE PETITION FOR CERTIORARI.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

No. 787.

JOHN E. MANNING, as Collector of Internal Revenue for the Fifth District of New Jersey,

Petitioner,

v.

SEELEY TUBE & BOX COMPANY, a corporation of the State of New Jersey,

Respondent.

BRIEF FOR THE RESPONDENT IN OPPOSITION TO THE PETITION FOR CERTIORARI.

Opinion Below.

The opinion of the District Court (R. 5-10) is reported in 76 F. Supp. 937. The opinion of the Court of Appeals (R. 13-17) is reported in 172 F. (2d) 77.

Question Presented.

The Commissioner of Internal Revenue in 1943 assessed amounts as deficiencies in the 1941 income and excess profits taxes of the taxpayer (respondent), plus interest thereon, which amounts were never collected or finally determined to be correct. When the taxpayer's operating loss for 1943 (which caused a net operating loss carry-back deduction for

1941 as provided in Sections 23(s) and 122(a) and (b) of the Internal Revenue Code) was determined, it was large enough to eliminate the taxpayer's net income for 1941 and the tax deficiencies for 1941 were abated.

The question presented is whether the petitioner (Collector) is entitled to collect interest upon such amounts assessed as deficiencies but never collected and which were finally determined not to be payable.

Statutes Involved.

The pertinent statutory provisions are printed in the appendix to this brief.

Statement.

The facts are not in dispute. Using round figures, they may be summarized as follows:

The taxpayer (respondent) timely filed its 1941 returns and timely paid $44,900 in taxes on its income for 1941 (R. 2, 3). Thereafter, on July 7, 1943, the taxpayer was adjudged a bankrupt and the Commissioner of Internal Revenue on August 2, 1943, pursuant to the provisions of Section 274(a) of the Internal Revenue Code (set forth in the appendix to this brief), assessed deficiencies aggregating $47,800 in taxes upon the taxpayer's income for 1941, plus interest thereon of $4,500 (R. 3). The amounts assessed as deficiencies were never paid (R. 6).

On March 3, 1944, the taxpayer timely filed its 1943 returns which disclosed a large net operating loss. It was agreed by the Commissioner of Internal Revenue and the taxpayer that the taxpayer's net operating loss for 1943 resulted in a net operating loss deduction under Section 23(s) of the Internal Revenue Code for the year 1941 suffi-

cient to result in the taxpayer's not having any net income for 1941 (R. 4, 5).

On March 15, 1944, the taxpayer filed with the petitioner claims for refund for the $44,900 in taxes on its 1941 income as shown upon its return and which it had paid (R. 4).

On February 9, 1945, the Commissioner of Internal Revenue abated the deficiencies in the amount of $47,800 what he had assessed in 1943 but never collected. He also at that time issued a certificate of overassessment with respect to the $44,900 of tax paid by the taxpayer upon its 1941 return. The Commissioner, however, refused to refund the entire amount of such $44,900 of tax, but refunded only $40,400 and retained the remainder amounting to $4,500 as "interest" upon the "deficiencies" in tax of $47,800 which had been assessed in 1943, had never been collected or finally determined to be due, and which had been abated in 1945 (R. 5).

The question involved in this suit is whether, under the Internal Revenue Code, interest upon a "deficiency" in tax may be collected where the "deficiency" itself may not be collected because it is not due.

The District Court held that interest might be collected from the taxpayer upon a "deficiency" even though the deficiency itself could not be collected from the taxpayer (R. 5-10). The Court of Appeals reversed the District Court and unanimously held that where the "deficiency" could not be collected because it was not due, interest could not be collected (R. 13-17).

Argument.

1. The collection of interest upon deficiencies in tax is governed by statute, namely, Section 292(a) of the Internal Revenue Code (set forth in the appendix to this brief).

This case presents a question of construction of the plain language of the statute.

Section 292(a) of the Code provides that interest upon a deficiency "shall be collected as a part of the tax". The tax portion of the deficiency in this case was never collected, but was abated (R. 7). It is therefore impossible for the Collector in this case to comply with the mandate of the statute as to the collection of interest. There is, therefore, under the express terms of the statute, no interest collectible.

The petition for certiorari sets forth that the issue involved in this case is involved in many thousands of other cases and that a large amount of interest revenue is at stake. It is hardly likely, however, that any appreciable number of the other cases involve a case, like the instant one, where the tax deficiency was never determined to be correct and was not collected by the Government. As the statute clearly provides for the collection of interest "as a part of the tax", there is no statutory authority for its collection here.

The instant case in that regard is unlike *Brandtjen & Kluge, Inc.* v. *United States,* 78 F. Supp. 509 (D. Minn., 1948), cited at page 7 of the petition. There the Government *collected* the assessed deficiency in tax plus interest, as it was given the power to do under Section 292(a). The Government subsequently refunded the entire tax and the taxpayer sued for a refund of the interest. While we believe that the decision in the *Brandtjen & Kluge* case was incorrect, it differs from the instant case radically in that there the Government did have statutory authority for the collection of the interest and the only question was whether it was refundable. In the instant case there is no statutory authority for the collection of the interest, as the tax itself was never collected.

2. Even if one were to assume that the instant case and the *Brandtjen & Kluge* case were similar, the statute requires the conclusion that interest may not be collected from the taxpayer with respect to a tax "deficiency" which has been abated. Section 271(a) of the Internal Revenue Code (set forth in the appendix to this brief) defines the term "deficiency" as being the "amount by which the tax imposed by this chapter exceeds the amount shown as the tax by the taxpayer upon his return". The "tax imposed" by the Internal Revenue Code for 1941 upon the taxpayer was zero, and the Commissioner of Internal Revenue issued a certificate of overassessment for the entire amount of such tax. That was proper since the taxpayer's deductions were in excess of its gross income and it did not have any net income which was subject to the tax. As the "tax imposed" for 1941 was zero, there can, by definition, be no "deficiency" upon which interest is payable.

The petitioner claims that, although the taxpayer's net operating loss for 1943 is expressly made a deduction for the year 1941 by Sections 23(s) and 122(a) and (b) of the Internal Revenue Code* (set forth in the appendix to this brief), the deduction should not be treated like other deductions, once its amount has been ascertained. There is not anything, however, in the wording of Section 23 of the Internal Revenue Code which indicates that the deduction under Section 23(s) is to be treated differently from that under any other section. Section 23 of the Code provides

* The carry-back provisions were put into the Internal Revenue Code by Section 153 of the Revenue Act of 1942, 56 Stat. 798, 847, which was approved on October 21, 1942, and by its terms was applicable to taxable years beginning after December 31, 1940. Accordingly, when the "deficiency" in the instant case was assessed on August 2, 1943, the carry-back provisions were in the law, and the taxpayer's liability for tax was "inchoate", as stated by the Court of Appeals (R. 16).

that the deduction under Section 23(s) "shall be allowed" in computing net income.

The Congress, in enacting the carry-back of loss provisions of the Internal Revenue Code, recognized that some change in respect of the ordinary rules relating to the payment of interest should be made in the light of the fact that the carry-back deduction might not be determined for several years after the return for a particular year was filed. It accordingly enacted Section 3771(e) of the Internal Revenue Code (set forth in the appendix to this brief) and provided that the Government should be relieved, for any period prior to the filing of a claim for refund of tax, from any obligation to *pay* interest on a refund in tax arising from a carry-back of net operating loss. The enactment of Section 3771(e) shows clearly that Congress had the problem of interest in mind in connection with carry-back deductions. It is significant that Congress did not attempt to make any change in the rules with respect to the *refund,* together with the tax, of any interest which a taxpayer had paid upon a deficiency in tax, when the deficiency was extinguished by reason of the carry-back of operating loss. The failure of Congress to enact a statutory provision of that character is particularly significant in view of the fact that the same problem arose under the Revenue Act of 1918, 40 Stat. 1057, and was decided administratively by the Bureau of Internal Revenue in favor of the taxpayer.

Section 204(b) of the Revenue Act of 1918 provided for a net loss carry-back. The Bureau of Internal Revenue ruled that a subsequent determination of a net loss for a succeeding taxable year, which required a carry-back and, hence, a reduction in the tax liability previously assessed,

did not affect the general rule that when a tax assessed as a deficiency is refunded, any interest paid with respect to the assessment of such deficiency must also be refunded. L. O. 1115, II-2 C. B. 221 (1923). In that ruling, the Bureau of Internal Revenue carefully considered the question and held that interest paid with respect to a tax which was wiped out by a carry-back of loss from a later year must be refunded since, if there is no tax, there cannot be any interest. That ruling further held that even a fraud penalty is extinguished if a subsequent determination arising out of the operation of a carry-back of loss shows no tax deficiency. The conclusion of that ruling (L. O. 1115) is as follows:

> "It is held: (1) Where a return contains a fraudulent understatement of tax and there is therefore a deficiency in the tax, but the deficiency is wiped out by applying the deduction allowable under section 204 of the Revenue Act of 1918, the *ad valorem* fraud penalty provided in section 250(b) of said Act is not applicable since upon the redetermination under section 204 of the Act there is no deficiency within the meaning of section 250(b); (2) where a tax is assessed and collected, together with the 5 per cent penalty and interest at the rate of 1 per centum per month, provided in section 250(e) for failure to pay within 10 days after notice and demand by the collector, and by reason of a redetermination as provided in section 204 the tax is reduced and a portion refunded, so much of the penalty and interest made a part of the tax by section 250(c) as is applicable to the amount of the tax refunded may be credited or refunded as excessive, as provided in section 252; (3) Solicitor's Opinion 96 is modified to accord with the above."

It has, of course, long been held by the courts and ruled by the Bureau that interest paid as part of a deficiency assessment for a taxable year is refundable when it is later determined that the deficiency was not payable, as interest is regarded as an accretion to and a part of the tax in connection with any refund or credit of the tax. *Big Diamond Mills Co.* v. *United States*, 51 F. (2d) 721 (C. C. A. 8th, 1931); *Phelps* v. *United States*, 105 F. (2d) 904 (C. C. A. 2nd, 1939); *Colorado Milling & Elevator Co.* v. *Howbert*, 57 F. (2d) 769 (C. C. A. 10th, 1932); I. T. 1447, I-2 C. B. 220 (1922).

The Treasury ruling just cited (I. T. 1447) states that "interest and penalties are in the nature of accretions to the tax and should be considered as a part thereof in connection with any refund or credit of the tax".

The petitioner argues, in effect, that since Section 3771(e) of the Code relieves the Government under certain circumstances from *paying* interest to the taxpayer on an overassessment resulting from an operating loss deduction, the Government is authorized to *collect* interest from the taxpayer upon the expunged deficiency. Had Congress intended to permit the latter, it could easily have inserted an appropriate provision to that effect in the Internal Revenue Code. Throughout the petition, an attempt has been made to convey to this Court the impression that (1) *refunding* by the Commissioner of interest theretofore paid by the taxpayer on a deficiency and (2) *payment* by the Commissioner of interest out of Government funds on an overpayment made by the taxpayer are treated alike in law. They are, of course, wholly different. That Section 3771(e) of the Code denies to the taxpayer under certain circumstances the right to receive interest on an overpayment does not have any effect upon the tax-

payer's right to recover any interest which he has paid to the Government and which is a part of the *overpayment itself.*

The petitioner's argument couples refunding of interest to the taxpayer with payment of interest by the Government as if the two were the same, although the Internal Revenue Code very carefully distinguishes between interest payable by a taxpayer and interest payable by the Government. Section 292 of the Code is entitled "Interest on Deficiencies" whereas Section 3771 is entitled "Interest on Overpayments". The former relates only to interest to be paid *by a taxpayer* where there is a deficiency in tax; the latter relates solely to interest to be paid *by the Commissioner* out of Government funds on an overpayment, which includes the tax principal and interest, if any, paid as a part of such tax. Those two sections do not relate to each other, and Section 3771(e) (which deals solely with interest on overpayments) neither authorizes the Government to retain a portion of an overassessment of tax as interest nor to collect interest. The fact that interest may not be collected from the Government on an overpayment of tax does not mean that the Commisisoner may either retain interest paid by a taxpayer or collect interest from him.

For example, suppose that in 1943 a taxpayer pays a deficiency in 1941 income tax of $100 plus $12 interest (two years at 6% per annum under Section 292 of the Code). In 1948, such deficiency is determined to be erroneous. Section 3771(a) (set forth in the apendix to this brief) of the Code provides that the Government shall pay interest at 6% per annum on the $112 (the amount of the overpayment) for the five years (1943 to 1948) that it has kept the money. Section 3771(e) of the Code merely adds

the further proviso that if the refund arises from the operation of the carry-back of loss provisions, the Government's obligation to pay 6% interest on the overpayment ($112) does not begin until a claim for the refund of such $112 overpayment has been made. Section 3771(e) does not in any way reduce the amount of the overpayment ($112); it simply deals with the computation of interest payable upon such $112. The only application of Section 3771(e) to the instant case is that the Government is required to pay the taxpayer interest on the overpayment of $4,500 for which this suit was brought, only for the period beginning March 15, 1944, the date of the filing of the claim for refund thereof by the taxpayer (R. 4).

The petitioner's argument is apparently based upon the contention that in the instant case a carry-back of loss from 1943 is not to be regarded as a proper deduction of the prior year 1941, *nunc pro tunc*. Not only is there no statutory authority for such a position, but the Commissioner does not adhere to that position in other circumstances.

For instance, the Commissioner takes the position in Treasury Regulations 111, Section 29.122-4(c)(4) that a deduction which is limited in amount to a percentage of the taxpayer's net income shall be recomputed when a loss is carried back from a succeeding year. That means that if a corporate taxpayer had net income shown on its return for 1943 of $100,000 and had deducted $5,000 for charitable contributions in that year under the 5% limitation provision contained in Section 23(q) of the Code, and then had a net operating loss of $90,000 in 1945 which, by reason of the carry-back became an additional deduction in 1943, the Commissioner would compel it to reduce its deduction for charitable contributions to 5% of the true net income figure of $10,000, namely, $500.

Moreover, in a situation converse to that presented in the instant case, it is understood that the Commissioner took the position that the carry-back applied *nunc pro tunc* and Congress in amending the statute recognized that it so applied. That situation arose in connection with the unused excess profits credit carry-back provided by Section 710(c)(3)(A) of the Code (set forth in the appendix to this brief). There, if a taxpayer corporation had an unused excess profits credit for 1944 which was carried back to the year 1942, the effect was to reduce the excess profits tax payable but at the same time to *increase* the income tax payable. Under those circumstances, it is understood that the Commissioner ruled that interest would be collectible *from the original due date of the tax* upon the deficiency in income tax for 1942 arising from the carry-back of unused excess profits credit from 1944 to 1942. The Congress recognized that such was a proper construction of the statute, saying in the Report of the Ways and Means Committee on the Tax Adjustment Act of 1945 (Report No. 849, 79th Cong., 1st Sess., page 33):

> "Interest on such deficiency, under present law, is payable from the date prescribed for the payment of the tax or, if the tax is paid in installments, from the date prescribed for the payment of the first installment."

In order to correct that situation, the Congress, by Section 6(a) of the Tax Adjustment Act of 1945, 59 Stat. 517, added Section 292(c) to the Internal Revenue Code (set forth in the appendix to this brief) which specifically provided that if a deficiency in tax be *caused* by a carry-back, then no interest shall be payable upon the deficiency except for such period that the Commissioner would be required to pay interest on an overpayment pursuant to Section 3771(e) of the Code.

If, without an amendment to Section 292, a carry-back was deemed by the Congress to accrue *nunc pro tunc* in the earlier year for the purpose of computing interest upon a deficiency which was *caused* by the carry-back, then the carry-back should also be deemed to accrue *nunc pro tunc* in the prior year for the purpose of abatement of interest upon a deficiency which is *eliminated* by a carry-back. If the Congress wishes to change that rule, it may do so by a further amendment to Section 292 of the Internal Revenue Code.

The petitioner states (Pet. 8) that if the taxpayer does not pay interest upon the "deficiency" which was abated because of the carry-back, he is in a better position than a taxpayer similarly situated who would have paid a larger tax at the time of filing his original return but who would be entitled to interest from the Government upon his refund under Section 3771(e) of the Code only from the date of filing a claim for refund thereof. That, of course, assumes that the "deficiencies" were properly payable, as to which point there was never any final determination. There is not any implication in the record, however, that the taxpayer in the instant case did not honestly file its return, or that the taxpayer in any way attempted to anticipate upon its return any operating loss deduction which it might receive because of a loss occurring two years later. The situation of which the Government complains was caused entirely by statute, namely, the enactment of Section 3771(e) of the Code which prevented the taxpayer from collecting interest from the Government on refunds arising from carry-backs for the period prior to the filing of a claim for refund thereof. If the Congress wishes to deal with the question of the payment by the taxpayer of interest upon "deficiencies" which are eliminated by carry-backs, it may do so by an appropriate amendment of Section 292 of the Code.

The Government's position in this case would create a much worse inequity than that of which it complains. It would make a taxpayer's liability for interest depend upon when its return was audited and additional tax assessed. If the return is audited and a tax deficiency with interest is assessed before the amount of the carry-back deduction has been determined, as happened in the instant case because of the taxpayer's bankruptcy, then the petitioner claims that interest is payable by the taxpayer upon such deficiency and not refundable to it. But the prompt assessment which occurred in the instant case is permitted only in a very limited class of cases of which a taxpayer in bankruptcy is one. In the ordinary case before an assessment of a deficiency in tax can be made, the taxpayer must be given an opportunity to take his case to the Tax Court of the United States under Section 272(a)(1) of the Internal Revenue Code (set forth in the appendix to this brief). There, if the taxpayer desires, the tax for the particular year in question may be determined and effect given to the operating loss deduction which is allowable for the particular year in view of the carry-back of operating loss from subsequent years. *Birch Ranch & Oil Company*, 7 T. C. M. 152 (Tax Court Memorandum Decision, March 24, 1948). Accordingly, in the ordinary case, a taxpayer can, by filing a petition with the Tax Court, in connection with a contest of a proposed deficiency, prevent the assessment of tax by the Commissioner until the amount of the net operating loss carry-back deduction has been determined, and can obtain a final decision that no tax is due. Moreover, the same result would follow if the taxpayer's return had not been audited promptly by the Government but had been audited in connection with its returns for 1942 and 1943. If the carry-back of operating loss was

determined in connection with the audit of the 1941 return, then no deficiency for 1941 would ever be assessed by the Commissioner of Internal Revenue. The petitioner's position in this case therefore discriminates against taxpayers against whom, for some reason such as bankruptcy, the Commissioner is permitted to make an immediate assessment of a tax deficiency and also bears differently upon taxpayers depending upon whether their returns are promptly audited or whether there is a delay in audit until the amount of the carry-back loss has been determined, so that no deficiency would ever be assessed.

3. The Court of Appeals in the instant case has not rendered a decision in conflict with a decision of another Court of Appeals. On the contrary, the decision of the Court of Appeals is in harmony with the rule laid down by the Courts of Appeals for the Second, Eighth and Tenth Circuits to the effect that the refund of a deficiency in tax should carry with it any interest paid by the taxpayer in connection with that deficiency. *Phelps* v. *United States*, 105 F. (2d) 904 (C. C. A. 2nd, 1939); *Big Diamond Mills Co.* v. *United States*, 51 F. (2d) 721 (C. C. A. 8th, 1931); *Colorado Milling & Elevator Co.* v. *Howbert*. 57 F. (2d) 769 (C. C. A. 10th, 1932), *supra*. *Brandtjen & Kluge, Inc.* v. *United States*, 78 F. Supp. 509 (D. Minn., 1948), relied upon by the petitioner, is a District Court decision (decided before the decision of the Court of Appeals in the instant case) which relies upon the opinion of the District Court in the instant case prior to its reversal. There is no reason to believe that a Court of Appeals will depart from the well-established rule that interest paid upon a deficiency must be refunded if the deficiency is refunded, unless the Congress changes the Internal Revenue Code so to provide.

Conclusion.

There is no conflict of decisions. The instant case was correctly decided in accordance with the controlling statute and decisions. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted,

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Appendix.

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

* * * * * * *

(s) *Net Operating Loss Deduction.*—For any taxable year beginning after December 31, 1939, the net operating loss deduction computed under section 122.

* * * * * * *

SEC. 122. NET OPERATING LOSS DEDUCTION.

(a) *Definition of Net Operation Loss.*—As used in this section, the term "net operating loss" means the excess of the deductions allowed by this chapter over the gross income, with the exceptions, additions, and limitations provided in subsection (d).

(b) *Amount of Carry-back and Carry-over.*—

(1) *Net operating loss carry-back.*—If for any taxable year beginning after December 31, 1941, the taxpayer has a net operating loss, such net operating loss shall be a net operating loss carry-back for each of the two preceding taxable years, except that the carry-back in the case of the first preceding taxable year shall be the excess, if any, of the amount of such net operating loss over the net income for the second preceding taxable year computed (A) with the exceptions, additions, and limitations provided in subsection (d) (1), (2), (4), and (6), and (B) by determining the net operating loss deduction for such second preceding taxable year without regard to such net operating loss.

* * * * * * *

SEC. 271. DEFINITION OF DEFICIENCY.

As used in this chapter in respect of a tax imposed by this chapter "deficiency" means—

(a) The amount by which the tax imposed by this chapter exceeds the amount shown as the tax by the taxpayer

upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax; * * *.

* * * * * *

SEC. 272. PROCEDURE IN GENERAL.

(a) (1) *Petition to Board of Tax Appeals.*—If in the case of any taxpayer, the Commissioner determines that there is a deficiency in respect of the tax imposed by this chapter, the Commissioner is authorized to send notice of such deficiency to the taxpayer by registered mail. Within ninety days after such notice is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the ninetieth day), the taxpayer may file a petition with the Board of Tax Appeals for redetermination of the deficiency. No assessment of a deficiency in respect of the tax imposed by this chapter and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such ninety-day period, nor, if a petition has been filed with the Board, until the decision of the Board has become final. Notwithstanding the provisions of section 3653 (a) the making of such assessment or the beginning of such proceeding or distraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court. In the case of a joint return filed by husband and wife such notice of deficiency may be a single joint notice, except that if the Commissioner has been notified by either spouse that separate residences have been established, then, in lieu of the single joint notice, duplicate originals of the joint notice must be sent by registered mail to each spouse at his last known address. If the notice is addressed to a person outside the States of the Union and the District of Columbia, the period specified in this paragraph shall be one hundred and fifty days in lieu of ninety days.

* * * * * *

SEC. 274. BANKRUPTCY AND RECEIVERSHIPS.

(a) *Immediate Assessment.*—Upon the adjudication of bankruptcy of any taxpayer in any bankruptcy proceeding or the appointment of a receiver for any taxpayer in any receivership proceeding before any court of the United States or of any State or Territory or of the District of Columbia, any deficiency (together with all interest, additional amounts, or additions to the tax provided for by law) determined by the Commissioner in respect of a tax imposed by this chapter upon such taxpayer shall, despite the restrictions imposed by section 272(a) upon assessments be immediately assessed if such deficiency has not theretofore been assessed in accordance with law. In such cases the trustee in bankruptcy or receiver shall give notice in writing to the Commissioner of the adjudication of bankruptcy or the appointment of the receiver, and the running of the statute of limitations on the making of assessments shall be suspended for the period from the date of adjudication in bankruptcy or the appointment of the receiver to a date 30 days after the date upon which the notice from the trustee or receiver is received by the Commissioner; but the suspension under this sentence shall in no case be for a period in excess of two years. Claims for the deficiency and such interest, additional amounts and additions to the tax may be presented, for adjudication in accordance with law, to the court before which the bankruptcy or receivership proceeding is pending, despite the pendency of proceedings for the redetermination of the deficiency in pursuance of a petition to the Board; but no petition for any such redetermination shall be filed with the Board after the adjudication of bankruptcy or the appointment of the receiver.

* * * * * *

SEC. 292. INTEREST ON DEFICIENCIES.

(a) *General Rule*—Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the

collector, and shall be collected as a part of the tax, at the rate of 6 percentum per annum from the date prescribed for the payment of the tax (or, if the tax is paid in installments, from the date prescribed for the payment of the first installment) to the date the deficiency is assessed, • • •.

• • • • • •

(c) *Deficiency Resulting From Carry-Back and Related Matters.*—If any part of a deficiency is determined by the Commissioner to be attributable (A) to a carry-back to which an overpayment described in section 3771 (e), or a decrease determined under section 3780 (b), in any other tax is attributable, or (B) to an error in the amount or effect of a carry-back which resulted in a credit or refund of an overpayment with interest computed pursuant to section 3771 (e), or in a decrease determined under section 3780 (b), no interest shall be assessed or paid under subsection (a) with respect to such part of the deficiency for any period during which interest was not allowed with respect to such overpayment or for a period prior to the application of such decrease.

• • • • • •

SEC. 710. IMPOSITION OF TAX.

• • • • • •

(c) *Unused Excess Profits Credit Adjustment.*—

• • • • • •

(3) *Amount of Unused Excess Profits Credit Carry-Back and Carry-Over.*—

(A) *Unused Excess Profits Credit Carry-Back.*—If for any taxable year beginning after December 31, 1941, the taxpayer has an unused excess profits credit, such unused excess profits credit shall be an unused excess profits credit carry-back for each of the two preceding taxable years, except that the carry-back in the case of the first preceding taxable year shall be the excess, if any, of the amount of such unused excess profits credit over the adjusted excess profits net income for the second preceding taxable year

computed for such taxable year (i) by determining the unused excess profits credit adjustment without regard to such unused excess profits credit, and (ii) without the deduction of the specific exemption provided in sub-section (b) (1).

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SEC. 3771. INTEREST ON OVERPAYMENTS.

(a) *Rate.*—Interest shall be allowed and paid upon any overpayment in respect of any internal revenue tax at the rate of 6 per centum per annum.

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(e) *Claims Based on Carry-Back of Loss or Credit.*—If the Commissioner determines that any part of an overpayment is attributable to the inclusion in computing the net operating loss deduction for the taxable year of any part of the net operating loss for a succeeding taxable year or to the inclusion in computing the unused excess profits credit adjustment for the taxable year of any part of the unused excess profits credit for a succeeding taxable year, no interest shall be allowed or paid with respect to such part of the overpayment for any period before the filing of a claim for credit or refund of such part of the overpayment or the filing of a petition with the Board, whichever is earlier.